

California Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

Wednesday, August 12, 1999

San Francisco, California

In Attendance

Chair Kristen Schwenkmeyer
Commissioners Jill A. Dulich, Leonard C. McLeod, Gerald O'Hara, Tom Rankin,
Robert B. Steinberg, Darrel "Shorty" Thacker, John C. Wilson
Executive Officer Christine Baker

I. Call to Order / Adoption of Minutes

Chairperson Schwenkmeyer called the meeting to order at 10:00 am. Commissioner Rankin moved to adopt minutes of the May 6, 1999 CHSWC meeting, Commissioners McLeod and Thacker seconded, and the motion passed unanimously.

II. Remarks by the new DWC Administrative Director

Richard W. Gannon, Administrative Director, Division of Workers' Compensation

Chairperson Schwenkmeyer introduced the new DWC AD Richard Gannon, who had served as Commissioner for the WCAB since 1992. Mr. Gannon expressed his pleasure at being appointed as AD under an administration that wants to make the system work as well as it can. He has been conferring with DWC staff and with the workers' compensation community for their input. Now that the WCAB is at full staff, he anticipates that certain issues that have concerned the Commission, such as standardization of forms and procedures, can be addressed. Mr. Gannon also noted that there might be a study of the judicial system as a result of SB 320, which could be done through the Commission by an outside entity performing objective analyses of the process. In response to a question by Commissioner Rankin, Mr. Gannon stated that the DWC would be working closely with the Labor Commissioner in the referral of potentially illegally uninsured employers.

III. Official Medical Fee Schedule Project

Susan McKenzie, MD, Industrial Medical Council
Christine Baker, CHSWC Executive Officer

Dr. McKenzie presented an overview of the process to revise the Official Medical Fee Schedule (OFMS), which sets reasonable maximum fees for medical treatment of injured workers. In 1996, a public advisory task force, under the joint sponsorship of the IMC and DWC, was set up to gather consensus recommendations from the workers' compensation community for the latest OFMS revision. Among the ideas presented was to adopt the federal resource-based relative-

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value scale (RBRVS) but there was insufficient time in that OMFS revision process to consider such a complicated system. After the new OFMS became effective in April 1999, the IMC initiated a study by UCLA to explore the options of adopting an RBRVS. That report will be presented to the IMC at its meeting on September 16, 1999 in South San Francisco.

The IMC is coordinating with the new DWC AD for a new OMFS revision due in April 2001. The IMC and DWC agree that there are two objectives for the 2001 revision: Exploring adoption of an RBRVS and developing an objective method by which to assign equitable conversion factors. Resolving these issues would assist in streamlining the revision process and reduce the resources needed biannually to update the fee schedule.

Dr. McKenzie summarized by stating that the OMFS is an important tool which plays a significant role in determining an injured worker's access to quality medical care and his or her timely return to productive employment. A fair fee schedule results in fewer disputes, thus freeing up the lien courts. The IMC understands the importance of its mandate and welcomes the Commission's interest and support as well as its close oversight in this vital project.

Ms. Baker reported that at the last meeting, Commissioner Dulich proposed that the Commission study how medical fee schedules in other states are developed. Subsequently, Commission staff explored the current status of the Official Medical Fee Schedule and whether any studies or surveys by the Commission were warranted.

The staff conducted interviews and a brief investigation regarding the OMFS process. Problems were identified concerning the process of the latest revision. Staff also conducted a briefing and discussion group at RAND regarding possible research topics.

The staff recommends that further action be deferred on the Official Medical Fee Schedule until the report from the UCLA study has been reviewed by the Commission.

Public Comment

Charles Bruscino, an injured worker advocate, asked what recourse an injured worker has when he or she has a concern about a treating physician's report. Dr. McKenzie replied that the IMC has a phone number to receive comments, suggestions, and complaints from injured workers and that she would give it to Mr. Bruscino.

IV. Updates On Treating Physician and Carve-Out Projects

Frank Neuhauser, Survey Research Center, UC Berkeley

Treating Physician Study

Mr. Neuhauser stated that the Treating Physician Study report has been submitted to the Commission for its consideration. This study dealt with concerns regarding the role of the treating physician and the presumption of correctness to the findings of the treating physician.

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The study found that the presumption of correctness did not result in cost-savings. The report recommends that the standard be set at a different level which gives great weight to the treating physician but allows the judges to use judicial discretion and to award based on the range of evidence. Mr. Neuhauser said that the draft report was amended in response to public comment to clarify that it was not recommending against the increased role of the treating physician regarding issues related to permanent disability and future medical.

CHSWC Vote

Commissioner Wilson moved that the Commission approve the Treating Physician Report for distribution, Commissioner Dulich seconded, and the motion carried unanimously.

Carve-Out Study

Mr. Neuhauser said that the draft Carve-Out report went out to public comment at the beginning of this year and received a substantial number of comments. The version now submitted to the Commission for consideration has incorporated those comments, but the conclusions and recommendations remain the same.

Comments about the report were made by Commission members and meeting attendees. Joe Markey of the California Self-Insurers Association said he would like to see the carve-out analysis include an evaluation of the impact on the injured worker and the relationship between the worker and employer. Commissioners Steinberg and O'Hara raised concerns about the report's conclusions and recommendations. Ms. Baker suggested that the Commission might wish to consider approving the report findings, but not the recommendations as it did with the Injured Worker report.

CHSWC Vote

Commissioner Rankin moved that the Commission approve the findings of the Carve-Out report, Commissioner Dulich seconded, and the motion passed unanimously.

V. WC Costs and Benefits after the Implementation of Reform Legislation

Frank Neuhauser, Survey Research Center, UC Berkeley

The Commission had been requested by the Legislature to study and prepare a special report on workers' compensation costs and benefits after the implementation of the reform legislation. Chairperson Schwenkmeyer asked Frank Neuhauser to present an overview of the study and its findings, which are shown in the attached copy of the slide presentation.

The study estimated that employer savings from the 1993 reforms were between \$1.3 billion and \$2.8 billion in 1998, and that increased benefits to injured workers were between -\$26 million and \$474 million in 1998. Mr. Neuhauser stressed that it is not possible to separate out exactly the impact of the reform from other impacts like the economy and there is not universal

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consensus about the assumptions one makes in order to perform such calculations. Therefore, estimates such as these should be utilized cautiously.

CHSWC Vote

Commissioner Rankin moved that the Commission accept the cost-benefit report, Commissioner O'Hara seconded, and the motion passed unanimously.

VI. Illegally Uninsured Employer Project – Status Report

Christine Baker, CHSWC Executive Officer

Ms. Baker reported that the CHSWC project on illegally uninsured employers was continuing with a focus on the motor carrier industry. At the request of Commission O'Hara and the DMV, Commission staff conducted a brief investigation, identified problems, and worked with an advisory committee to develop recommendations for further action.

CHSWC Vote

Commissioner O'Hara moved that the Commission approve the recommendations for further action, Commissioner Dulich seconded, and the motion passed unanimously.

VII. CHSWC Permanent Disability Study by RAND
Updates on Self-Insured Study and Impact of Local Economic Conditions

Robert T. Reville, Economist, RAND

Mr. Reville presented status updates on two components of the CHSWC PD study by RAND – wage losses of workers of self-insured employers and the impact of local economic conditions.

Data from self-insured firms was collected, processed and compared with data from the Employment Development Department. The data is indicating that injured workers of self-insured employers have a higher level of wage replacement than injured workers of insured employers. Since the analysis continues, Mr. Reville emphasized that these results were preliminary and subject to change. A presentation will be made to the PD Policy Advisory Committee in September.

Guy Schulke with the Contra Costa County Schools Insurance Group suggested that the wage loss analysis clarify and take into account that workers' compensation benefits are non-taxable. Mr. Reville said that was a good point, and that it had been taken care of in the last sensitivity checks of the data.

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VIII. Labor Code Section 5814 Issue

Thomas J. McBirnie, Esq., Consultant

Mr. McBirnie gave an update on his analysis of Appellate Court review of WCAB decisions involving Labor Code Section 5814 penalty issues. Preliminary findings indicate that there seems to be a high level of frequency of 5814 cases and a surprising amount of litigation about whether there should be a penalty at all.

Ted Durden from Block Medical Clinic and William Herreras of the California Applicants' Attorneys Association provided suggestions and observations on evaluating the appellate court case information.

Ms. Baker announced that the Commission was also in the process of receiving 5814 data from the DWC district offices. That data will be combined with Mr. McBirnie's analysis in a single report.

IX. CHSWC 1998-1999 Annual Report

Christine Baker, CHSWC Executive Officer

Ms. Baker announced that the CHSWC 1998-1999 Annual Report had been finalized for Commission consideration.

CHSWC Vote

Commissioner Rankin moved that the Commission approve the CHSWC 1998-1999 Annual Report, Commissioners Dulich and O'Hara seconded, and the motion passed unanimously.

X. Update and Discussion regarding Commission Studies and New Proposals

Christine Baker, CHSWC Executive Officer

California Study Group on Young Worker Health and Safety

This statewide task force, funded by the Commission, is charged with coordinating strategies to protect young people from work-related injury or illness. The group promoted May 1999 as "Safe Jobs for Youth" month, which included a proclamation by Governor Gray Davis. Prevention strategies recommended by the group have been incorporated in proposed legislation AB1599 (Torlakson) which would create a resource center within DIR.

Benefit Notice Project augmentation

The Commission's benefit notice project has been progressing and a report is expected at the next CHSWC meeting in November 1999. The Benefit Notice Advisory Committee has urged

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that this project be augmented to improve the laws and regulations governing information for workers. The goals of the proposed project augmentation are to further identify the statutory and regulatory requirements that cause the greatest problems with notices from the injured workers' experience and to identify and propose practical changes in laws and regulations to improve the information provided to workers. The cost of the augmentation would be \$34,300.

CHSWC Vote

Commissioner O'Hara moved that the Commission approve the Benefit Notice project augmentation, Commissioner Wilson seconded, and the motion passed unanimously.

National Survey of Compensation for Public Safety Employees

This project is being conducted under the auspices of RAND and a report is expected in October 1999. The objective of this study is to determine whether California Labor Code 4850 provides optimal coverage and incentives.

Evaluation of Targeting Methods – High Hazard and Loss Control

In conjunction with UC Berkeley, the Commission is conducting a survey of targeted safety efforts in the 50 US states and in the Canadian provinces. An evaluation of the loss control efforts will be conducted by comparing pre and post intervention experience of employers.

Primary Treating Physician Effectiveness in Return-To-Work

This proposed project would study the effectiveness of the primary treating physician in facilitating return-to-work after a compensated low back injury in California. The study would describe the characteristics of primary treating physicians treating injured workers with lost-time low back injuries in the California workers' compensation system in terms of training, clinical experience, beliefs and attitudes, professional license and specialty, and determine if there are associations between such characteristics and patient outcomes.

CHSWC Vote

Commissioner Thacker moved that the Commission approve the Primary Treating Physician Effectiveness in Return-To-Work project, Commissioner Dulich seconded, and the motion passed unanimously.

XI. Other Business / Public Questions / Comments / Adjournment

Public Comments

Charles Bruscino

Charles Bruscino is an injured worker and an injured worker advocate with the Association of Injured Workers. Mr. Bruscino expressed the opinion that the workers' compensation system is

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"evil" and needs changes to stop harming injured workers and be more user-friendly. He believes that feedback from injured workers should be solicited on a systematic basis. Mr. Bruscano noted that the Department of Insurance is still disseminating information that 10% to 30% of workers' compensation claims filed in California are fraudulent which leads to an "irrational paranoia" about injured workers.

(SPECIAL NOTE: At the request of Commissioner Rankin, commission staff contacted the Department of Insurance to request the source of the statistic cited in its brochure entitled "Easy Money? Hard Time.")

Armando Crespo

Armando Crespo, an injured worker, believes that information on a workers' compensation injury should be obtained from the injured worker. Mr. Crespo has had a workers' compensation case pending since 1994.

Linda Berg

Linda Berg, an injured worker, contracted Lyme disease as a surveyor. Based on her observations and experience, she believes that the workers' compensation system is "corrupt to the core". Ms. Berg hopes that there will be constructive change under the new administration so that the system benefits the injured workers rather than the "parasitic defense lawyers and doctors who profit unconscionably at the expense of the injured workers."

Adjournment

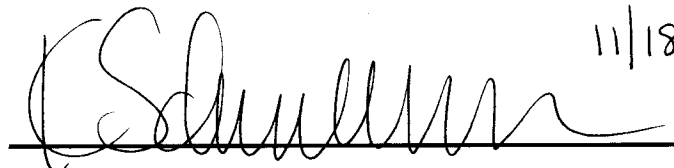
A motion to adjourn was made by Commissioner Rankin, seconded by Commissioner O'Hara and passed unanimously. Chairperson Schwenkmeyer adjourned the meeting at 12:55 p.m.

Future Meetings

The next meeting of the Commission will be held on **November 18, 1999** at the State Building, 455 Golden Gate Avenue in **San Francisco**.

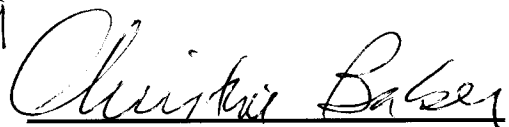
Approved:

Respectfully submitted,


Kristen Schwenkmeyer, Chair

Date

11/18/99



Christine Baker, Executive Officer